

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF: )

Huntsman Advanced Materials )

Air Facility ID No. 108-0022 )

McIntosh, Washington County, Alabama )

CONSENT ORDER NO. 09-\_\_\_\_-CAP

***PREAMBLE***

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department”) and Huntsman Advanced Materials (hereinafter, the “Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code, §§22-22A-1 through 22-22A-16, (2006 Rplc. Vol. ), the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.),, and the regulations promulgated pursuant thereto.

***STIPULATIONS***

1. The Permittee operates a chemical manufacturing plant, Air Division Facility No. 108-0022, located in McIntosh, Washington County, Alabama (hereinafter, the “Facility”)

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).

3. Pursuant to Ala. Code §§22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to

administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. On March 13, 2002, the Department issued Major Source Title V Operating Permit #108-0022 (hereinafter, the “Permit”) to the Permittee, subject to certain conditions and requirements. The Permit was re-issued on November 19, 2007.

5. The following production units are regulated under the Permit: Basic Liquid Resins Unit (hereinafter, “BLR Area 12”), and the Specialty Polymers Unit (hereinafter, “Area 19”).

6. On September 14, 2006, the Permittee reported that twenty-eight components in Area 19 were not monitored as required under 40 CFR Part 60, Subpart VV.

7. Proviso #1 of the Applicability Section of Area 19 of the Permit states: “This facility has accepted a requirement to perform a leak detection program equivalent to 40 CFR Part 60, Subpart VV in order to remain minor with respect to PSD.”

8. Proviso #3 of the Emission Standards Section of Area 19 of the Permit states: “The facility shall implement a Leak Detection and Repair (LDAR) Program equivalent to 40 CFR Part 60, Subpart VV.”

9. Proviso #3 of the Emission Monitoring Section of Area 19 of the Permit states: “This facility shall follow monitoring requirements equivalent to those of 40 CFR 60, Subpart VV as listed in 40 CFR Part 60.480 through 60.489.”

10. On October 26, 2006, the Department issued a Notice of Violation (hereinafter, “NOV”) to the Permittee for the failure to comply with the requirements of Subpart VV.

11. On December 11, 2007, the Permittee reported the following deficiencies: 1) It failed to document weekly visual opacity inspections associated with emission point 19-EP-33. 2) It had 122 components associated with the closed vent system in Area 12 BLR that were not included in the LDAR program required under 40 CFR Part 63, Subpart H. 3) It failed to follow the required Continuous Air Monitoring (CAM) plan in association with the BLR Process Vent Scrubber.

12. Proviso #1 of the Recordkeeping and Reporting Requirements Section of Area 19 of the Permit states: “The facility shall maintain records of its visual inspection of emission points 19-EP-01, 19-EP-02, 19-EP-05, 19-EP-17, 19-EP-18, 19-EP-20, 19-EP-27, 19-EP-28, and 19-EP-33.”

13. General Proviso #12(a)(2) of the Permit requires the Permittee to verify whether or not the unit is in compliance with all requirements of the Permit.

14. Proviso #3 of the Emission Monitoring Section of Area 12 of the Permit states: “This facility shall follow the monitoring standards for the Leak Detection and Repair program as listed in 40 CFR Part 63.162 – 63.179.”

15. Proviso #3 of the Recordkeeping and Reporting Requirements Section of Area 12 of the Permit states: “The facility shall follow the recordkeeping and reporting requirements of the 40 CFR part 63 Subpart H LDAR program as required by 40 CFR 63.527(d) and 40 CFR Part 63.528(b). All records and reports shall be retained for a period of 5 years, in accordance with 40 CFR 63.10(b)(1).”

16. General Proviso #34 of the Permit requires the Permittee to comply with the BLR unit’s CAM Plan.

17. On March 21, 2008, the Department issued an NOV to the Permittee for failure to maintain required opacity records, failure to properly certify compliance status,

failure to comply with 40 CFR Part 63, Subpart H, and failure to properly follow the Facility's CAM Plan.

18. On March 2, 2009, the Department received from the Permittee the Semi-annual Compliance Report (hereinafter, the "Report") as required under 40 CFR Part 63, Subpart FFFF.

19. The Report stated that for the time period October 7, 2008 – October 27, 2008, the liquid to gas ratio of the Area 19 thermal oxidizer/scrubber system (19-EP-34) was not recorded.

20. The Report stated that for the time periods July 30<sup>th</sup> – July 31<sup>st</sup>, 2008, for a total of 29 hours, and September 6<sup>th</sup> – September 10, 2008, for a total of 83 hours, the process vent stream containing halogenated Hazardous Air Pollutants (HAPs) bypassed the thermal oxidizer control device and vented to a flare.

21. The Report stated that on June 7, June 8, October 26, and October 27, 2008, the daily average thermal oxidizer temperature was below the minimum value set by the unit's compliance test with respect to 40 CFR Part 63, Subpart FFFF.

22. The Report stated that the Permittee failed to monitor its agitators weekly from May 10<sup>th</sup>, 2008 to February 10, 2009.

23. Proviso #9 of the Emission Standards Section of Area 19 of the Permit states: "The unit shall comply with the provisions of 40 CFR Part 63, Subpart FFFF – National Emission Standards for Hazardous Air Pollutants : Miscellaneous Organic Chemical Manufacturing by the compliance date."

24. General Proviso #15(b) of the Permit states:

In the event that there is a breakdown of equipment or upset of process in such a manner as to cause, or is expected to cause, increased emissions of air contaminants which are

above an applicable standard, the person responsible for such equipment shall notify the Director within 24 hours or the next working day and provide a statement giving all pertinent facts, including the estimated duration of the breakdown. The Director shall be notified when the breakdown has been corrected.

25. General Proviso #21(b) of the Permit states:

Deviations from permit requirements shall be reported within 48 hours or 2 working days of such deviations, including those attributable to upset conditions as defined in the permit. The report will include the probable cause of said deviations, and any corrective actions or preventive measures that were taken.

26. On April 22, 2009, the Department issued an NOV to the Permittee for violation of ADEM Admin. Code 335-3-11-.06(83), which references 40 CFR part 63, Subpart FFFF and General Provisos 15(b) and 21(b).

27. On May 15, 2009, the Department received a response from the Permittee to the April 22, 2009, NOV.

28. On August 24, 2009, the Department received from the Permittee the second Semi-annual Compliance Report as required under 40 CFR Part 63, Subpart FFFF.

29. The second report listed three instances when the vent header was diverted to the flare for a period exceeding four hours while the unit was in operation.

30. The Permittee consents to abide by the terms of the following Order and to pay the civil penalty assessed herein.

31. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above alleged violations. The Department

has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

### ***CONTENTIONS***

Pursuant to Ala. Code §22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than one hundred dollars (\$100.00) or exceed twenty-five thousand dollars (\$25,000.00) for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed two hundred fifty thousand dollars (\$250,000.00). Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** The Department considers the following to be serious violations by the Permittee:

- (1) Failure to comply with Federal Maximum Achievable Control Technology Standards by by-passing the primary control device resulting in excess emissions; and
- (2) Failing to monitor components for leaks.

B. THE STANDARD OF CARE: The Department considers the Permittee to have demonstrated a low standard of care for its continued failure to identify all components required under its LDAR programs and for its deficient notification procedures for periods of non-compliance.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has determined that the Permittee may have gained economic benefit by not installing all components into its LDAR programs and by continuing to operate while by-passing the primary control device.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Permittee has updated its Start-up, Shutdown, and Malfunction Plan to address periods of downtime for the primary control device.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee's previous violations with the Department, in regard to this Facility, are referenced in the Findings portion of this Consent Order.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

### ***ORDER***

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code §22-22A-5(18)c. (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this ORDER with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$25,000.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Permittee agrees that within ninety days of the effective date of this Order, the Facility shall have completed a review of all MON programs by an outside contractor to verify the Facility's compliance status with the requirements of 40 C.F.R. §63 – Subpart FFFF and shall submit a report of the findings to the Department. The Facility shall also update the Start-up, Shutdown, and Malfunction plan and General Proviso notification procedures within ninety days of the effective date of the Order to insure future compliance.

C. The Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management



P.O. Box 301463  
Montgomery, Alabama 36130-1463

D. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

E. The parties agree that, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the alleged violations and/or deviations which are cited in this Consent Order.

F. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable

control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The Department and the Permittee agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the Facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

I. The Department and the Permittee agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent

Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

J. The Department and the Permittee agree that this Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

K. The Department and the Permittee agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

L. The Department and the Permittee agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

M. The Department and the Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.

N. The Department and the Permittee agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

HUNTSMANN ADVANCED  
MATERIALS

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

---

(Signature of Authorized Representative)

---

Onis "Trey" Glenn, III  
Director

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Title)

\_\_\_\_\_  
(Date Signed)

\_\_\_\_\_  
(Date Executed)